United Nations A/C.3/58/SR.41

General Assembly
Fifty-[illegible] session
Official Records

Distr.: General
xxx 2003

Original: English

Third Committee

Summary record of the 41st meeting
Held at Headquarters, New York, on Wednesday, 12 November 2003, at 10 a.m.

Chairman:	Mr. Belinga-Eboutou	(Cameroon)
later:	Mr. Priputen (Vice-Chairman)	(Slovakia)
later:	Mr. Belinga-Eboutou (Chairman)	(Cameroon)

Contents

Agenda item 117: Human rights questions (*continued*)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*)

(e) Report of the United Nations High Commissioner for Human Rights (*continued*)

This record is subject to correction. Corrections should be sent under the signature of a member of the delegation concerned *within one week of the date of publication* to the Chief of the Official Records Editing Section, room DC2-750, 2 United Nations Plaza, and incorporated in a copy of the record.

Corrections will be issued after the end of the session, in a separate corrigendum for each Committee.

03-60984 (E)

The meeting was called to order at 10.15 a.m.

Agenda item 117: Human rights questions (*continued*)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/58/118 and Corr. 1, A/58/121, A/58/181 and Add.1, 185 and Corr.1 and Add.1 and 2, A/58/212, 255, 257, 261, 266, 268, 275, A/58/276 and Add.1, A/58/279, 296, 309, 317, 318, 330, 380 and 533; A/C.3/58/9)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/58/127, 218, 219, 325, 334, 338, 379, 393, 421, 427, 448 and 534; A/C.3/58/6)

(e) Report of the United Nations High Commissioner for Human Rights (*continued*) (A/58/36)

1. **Mr. Hunt** (Special Rapporteur on the right of everyone to enjoy the highest attainable standard of physical and mental health), introducing his report (A/58/427), said that his approach to his mandate included wide consultation and cooperation, and the conviction that international human-rights law should be consistently and coherently applied and that national and international cases confirmed the justiciability of the right to health, which included health care and the underlying determinants of health.

2. His focus had been the promotion of the human right to health as enshrined in legally binding international treaties, the Constitution of the World Health Organization (WHO) and Commission on Human Rights resolutions; the legal scope of the right to health and identification of good practices for its realization at all levels; and poverty coupled with discrimination and stigma, thus reinforcing the congruity between his mandate and the four health-related Millennium Development Goals.

3. The six specific issues he would be addressing during his mandate were the health component of poverty-reduction strategies, including strategy papers; neglected diseases; impact assessments; the World Trade Organization (WTO) and the right to health; mental health; and the role of health professionals. While the court-based approach to the right to health played an indispensable role, there was also the policy approach, which involved local, national and international policy-making. He intended to examine and promote those two mutually enforcing approaches which were indispensable to the full realization of the right to health.

4. Policies based on human-rights norms — such as the right to health — were more likely to be effective, sustainable, inclusive and meaningful, especially for the most disadvantaged. The policy approach, while not dependent on court processes, was by no means a soft option, demanding as it did legal clarity, rigorous analysis, transparent policy processes, creative policy initiatives, careful monitoring, an unswerving commitment to human rights and political will, all underpinned by a commitment to listen to the powerless, and effective mechanisms of human-rights accountability. The policy approach posed a huge challenge to the human-rights community because traditional human-rights techniques, although still essential, no longer sufficed for the integration of the right to health into national and international policy-making.

5. He would be submitting to the Commission in 2004 the report on his recent mission to the WTO to consider trade rules and policies in the context of the right to health. The mission's main objective had been to enhance the human-rights community's understanding of the WTO and the understanding of the right to health among those working on trade issues. Accordingly, he had held a number of meetings with the WTO secretariat and some member countries. In that connection, he was grateful to the Government of Mozambique for its invitation for him to visit the country in December.

6. Regarding the difficult issue of right-to-health indicators, which were needed at both the national and international levels, the international right to health was subject to progressive realization, which could be monitored only with the use of health indicators and benchmarks to help States and others recognize when national and international policy adjustments were needed. However, while playing a useful role, they could never provide a complete picture of the enjoyment of the right to health. Another issue he highlighted was neglected diseases suffered by the poorest people in the poorest countries; he hoped to examine in detail with WHO in 2004 the major human-rights problem posed by the "10/90 disequilibrium",

which referred to the unconscionable fact that only 10 per cent of health research and development was directed at the health burden of 90 per cent of the world's population (A/58/427, para. 76).

7. *Mr. Priputen (Slovakia), Vice-Chairman, took the Chair.*

8. **Mr. Vigny** (Switzerland) asked the Special Rapporteur to expatiate on the nature and degree of States' national and international responsibility and modus operandi deriving from right-to-health indicators and good practices. Regarding discrimination and stigma, he asked what strategies should be adopted in order to ensure due attention suited to the needs of leprosy sufferers living in poverty, as well as broader international awareness of the need to respect their basic right to health.

9. **Mr. Coimbra** (Brazil), referring to the 10/90 disequilibrium and the lack of necessary drugs, vaccines and diagnostic tools for many diseases rife among the deprived segments of developing countries' populations, asked how that distorted health agenda affected the realization of the right to health, especially in terms of non-discrimination, availability and accessibility. He also asked what linkages existed between gender discrimination and the right to sexual orientation on the one hand, and effective strategies for addressing HIV/AIDS on the other.

10. He would also like to know what contribution the right to health could make to the implementation of the Millennium Declaration, especially the Millennium Development Goals, and what relation there was between the realization of the right to health and Millennium Goal 1 on the eradication of extreme poverty and hunger. Lastly, he would like to know the Special Rapporteur's view of the decision reached in August 2003 by WTO member States on the implementation of paragraph 6 of the Doha Declaration on the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Public Health.

11. **Ms. Borzi Cornacchia** (Italy), speaking on behalf of the European Union, asked the Special Rapporteur to comment on the desirability of the process and outcome right-to-health indicators (A/58/427, para. 22) and, given the difficulty of obtaining reliable disaggregated data, how the Special Rapporteur intended to set about achieving "enhanced accountability" in connection with HIV/AIDS.

12. **Mr. Hunt** (Special Rapporteur) said he had attempted to address the controversial issue of right-to-health indicators and benchmarks in a balanced and practical manner in his report. The starting point should be the concept of progressive realization with changes occurring over time. He could think of no other way of addressing it than by using indicators, which were a useful tool for States in determining when policy adjustments were required. National indicators were needed to inform a State of its achievement in its own jurisdiction, but a rich State also needed international indicators for assessing its own progress in dealing with health in relation to poor States. The idea of international indicators was not new, many having been included in Millennium Development Goal 8 and the Declaration of Commitment on HIV/AIDS.

13. The difference between process and outcome indicators was that the former addressed the efforts of Governments or other actors towards the realization of the right to health, whereas the latter was more concerned with the "facts" about people's health. Reliable disaggregated data was very hard to come by. It was precisely because data collection depended on capacity-building and would take time that he had proposed the use of structural indicators, which did not rely on surveys, were cost-effective and could be obtained through questionnaires.

14. The questions raised by the representative of Brazil covered large issues. He was cautiously pleased with the August 2003 agreement of the WTO members: the starting point must be that access to essential medicines was an integral part of the right to health. However, the actual agreement risked being strangled by the excessive red tape accompanying it. For that reason, it must be carefully monitored to ensure that it did what it was intended to do, namely enhance access by the poor to essential drugs. A new bill seeking to implement that agreement had recently been passed by the Canadian Government and would facilitate the export of generic low-cost drugs to developing countries.

15. Regarding the 10/90 disequilibrium, there was growing recognition of the immorality and absurdity of the fact that more health money was spent on hair loss than on river blindness or sleeping sickness. His role was twofold: to draw attention to the problem as often as he could and to frame it, for the first time, as a human-rights problem. Without more research and

development the drugs needed would not be available, thus perpetuating the discrimination against the poorest of the poor. International human-rights law recognized that everyone should benefit from scientific progress; clearly, those who suffered from neglected diseases did not. Over the next 12 months he intended to provide an objective analysis of such diseases from the point of view of the right to health, as a basis for taking the issue forward.

16. In an effort to contribute to the realization of the Millennium Declaration, he had already met with persons directly involved in the Millennium project. While integration of the right to health into the Millennium Development Goals would bring no radical new departure, it would reinforce elements already there, such as the critical importance of non-discrimination and equality. To connect the right to health to the Millennium Development Goals meant more than studying averages, which often disguised the worsening situation of marginal groups, making disaggregation a necessity. The right to health could also contribute to the Goals by placing emphasis on health systems, rather than on solely vertical interventions around malaria, for instance. Generally speaking, policies would be more equitable and sustainable if human rights and the right to health could be integrated into policy-making.

17. Discrimination and stigma were wrong as a matter of human-rights principle; they offended human dignity and devalued human beings. But there was also a question of human-rights practice: discrimination and stigma inhibited health interventions by sending the problem underground, where it worsened and could not be addressed. He therefore supported initiatives designed to combat discrimination on the grounds of gender or sexual orientation.

18. Much progress had been made regarding leprosy, for which a cure had been made available to everyone free of charge through a charity and a pharmaceutical company. Hence, what the leprosy anti-stigma campaign must address as a matter of priority was access to the medication, integrating the right to health, as had been done with HIV/AIDS. His main mission with regard to HIV/AIDS was to assess during his missions how countries were dealing with the pandemic, as he would be doing when he visited Mozambique in December.

19. Lastly, international responsibilities to help countries realize the right to health derived from the Charter, a wide array of international declarations and conventions, the world conferences of the 1990s and, crucially, the Millennium Declaration. He would pay balanced and due attention to the national and international responsibilities that States had incontrovertibly accepted. International responsibility was not so much the transfer of resources from North to South as a duty to create a global environment in which poorer countries could eradicate poverty and realize the right to health.

20. **Mr. Pinheiro** (Special Rapporteur on the situation of human rights in Myanmar), introducing his interim report on developments relating to the human-rights situation in Myanmar during the first seven months of 2003 (A/58/219), said that he had made his sixth visit to the country from 3 to 8 November 2003, and had noted significant setbacks for human rights and national reconciliation since his visit in March 2003. The tragic incident near Depayin on 30 May 2003 (ibid., para. 10) had involved serious human-rights abuses with deep political implications. During his mission he had been able to supplement the official accounts of the incident through interviews with victims and eyewitnesses, as well as Daw Aung San Suu Kyi. In response to his request, the authorities had agreed to share with him an unpublished report on the results of their official investigation. From what he had heard and seen during the mission, he could say that there was prima facie evidence that the Depayin incident could not have happened without the connivance of State agents.

21. The effects of that incident had included closure of all National League for Democracy (NLD) offices, the incommunicado detention of Daw Aung San Suu Kyi, house arrest of NLD members and arrest of their supporters and other activists, and increased surveillance and intimidation. Victims of the attack, rather than the attackers, accounted for most of the resulting arrests. Rectifying that regression in the human-rights situation required the immediate and unconditional release of all those in detention or under house arrest since 30 May 2003 and the re-opening of NLD offices.

22. Lessons should be learned from the Depayin incident. It was a question not of seeking revenge or taking a partisan political stance, but of redressing the resulting human-rights violations and moving the

country along the path to democratization. He had therefore proposed to the State Peace and Development Council that he should be allowed to conduct an independent assessment of those events; the authorities had not yet agreed to his proposal.

23. During his most recent visit, he had gained insight into the seven-step "road map" proposed by the Government for the transition to democracy. Three committees had been formed to prepare the National Convention, which would have as its starting point the 104 principles laid down; all political parties would be able to participate equally, and there would be new elections under a new Constitution. In his view, however, many elements necessary for a genuinely free, transparent and inclusive process were still lacking. Any credible political transition must be guided by human-rights principles and would require the lifting of all remaining restrictions on freedom of expression, movement, information, assembly and association and the repeal of related security legislation. The authorities had agreed in principle to his proposals, and he was awaiting credible indications as to when and how those reforms would be implemented.

24. Concerning the situation of Daw Aung San Suu Kyi, he had been informed by the authorities that she was no longer being detained under security legislation; however, her telephone remained cut off and the security arrangements which remained in place amounted to house arrest. She had made it clear to him that she would not accept freedom for herself until all those arrested since 30 May 2003 had been released.

25. He had received reports that there had been approximately 250 new arrests since 30 May 2003, while the latest government figures stated that 153 people had been arrested in connection with the Depayin incident. According to government sources, two thirds had been released to date, including eight prisoners on 9 November. The detention of pregnant women and those with small children was currently under review. He had also visited Insein Central Prison and interviewed 19 political prisoners. The practice of extending the detention of such prisoners who had served their sentences by placing them under "administrative detention" continued, and was even applied to elderly and infirm prisoners.

26. The suffering of the vulnerable in Myanmar was evident. The Government and the development-assistance community had made impressive efforts to fight HIV/AIDS and to promote health care, education and employment, but the vulnerable groups should not be made to pay for its economic policies.

27. The solution to the situation in Myanmar would be found only through dialogue and negotiations. All sectors of society must decide together on the direction that was best for their country; a unilateral move by any one group would not bring Myanmar closer to its destination.

28. **Mr. Kyaw Win** (Myanmar) said that, as part of its long-standing policy of cooperation with the United Nations, Myanmar had accepted the visits of an independent expert and two special rapporteurs on human rights. His delegation had hoped that the current Special Rapporteur, who had just returned from his sixth visit to the country, would have been able to withstand the pressure and propaganda of expatriate dissident groups whose allegations had repeatedly been proved wrong. In the past two years, his delegation had commended the Special Rapporteur for his integrity and impartiality.

29. The regrettable incident at Depayin on 30 May 2003 had influenced many of the conclusions in his interim report (A/58/219). During the first six months after the lifting of restrictions on political parties in May 2002, there had been a gradual political liberalization. Daw Aung San Suu Kyi and her colleagues had made visits around the country to view development projects and attend to party matters. However, they had subsequently ignored the ground rules, declined government offers of security and travelled with dozens of vigilante escorts. Those who had clashed with her motorcade at night in a remote area with no police or military presence were not limited to government supporters or to a particular party. If her group had been travelling under proper security arrangements, the incident could have been avoided.

30. The incident had not threatened international peace and security, and the accounts of so-called eyewitnesses who had fled across the border were inaccurate. Although eyewitness accounts had initially claimed that Daw Aung San Suu Kyi had sustained injuries, the Special Envoy of the Secretary-General had confirmed government reports that she was unharmed. Those same eyewitnesses had claimed that over 100 people had been killed, yet police

investigations revealed only four deaths. The Government had been surprised that the Special Rapporteur had joined the chorus of detractors by promoting the impression that the incident indicated an element of premeditation. It was also disappointed that someone of his stature would allow himself to be swayed by the rumour that Daw Aung San Suu Kyi was on a hunger strike, which the International Committee of the Red Cross had determined not to be the case. The Special Rapporteur should be aware that sources which had misled him in the past would be unlikely to provide him with objective data in the future. The Government had been able to make peace with 95 per cent of the armed insurgencies and would not be deterred by that incident from continuing the political transition with all political parties and ethnic groups willing to join the process.

31. He had three additional comments to make regarding the interim report. The first concerned the so-called relocations in Shan State (ibid., para. 46). The leadership of ethnic groups from the poppy-growing areas of Wa State had moved the groups to fertile valleys where they could grow alternative crops and end their dependence on opium, and even United States satellite imaging had confirmed estimates of a 39-per-cent decline in the opium crop from the previous year. Second, he questioned the observation that the people of Myanmar were lagging behind the rest of South-East Asia. It should have been noted that Myanmar's rank in the UNDP Human Development Index was not the lowest in the region, and it was striving hard to improve itself, despite Western sanctions. Third, it was most regrettable that the Special Rapporteur had referred to the Prime Minister's plan as the "so-called road map", a term used by anti-government elements. The road map would be implemented systematically under conditions of peace and stability and should not be criticized prematurely or dismissed out of hand.

32. Myanmar had cooperated with the United Nations and would continue to do so as long as its sovereignty and integrity were not infringed on. Any such move by manipulation of United Nations mechanisms would be strongly resisted. It was resolved to continue the political transition with the involvement of all sectors of society, and would not give in to pressure from any quarter.

33. **Ms. Plaisted** (United States of America) asked the Special Rapporteur to give his views on the potential for a credible independent investigation of the Depayin incident, and whether he had received any further information on the number of persons killed, how the detainees were being treated and how they had been interrogated.

34. **Mr. Xie** Bohua (China) asked for a description of the relationship between Daw Aung San Suu Kyi and the Government of Myanmar at the time of his visit in March and during his most recent visit.

35. **Mr. Cho** Tae-ick (Republic of Korea) said that the Government's seven-step road map was impressive, and his delegation hoped it would lead to genuine dialogue. He asked the views of the Special Rapporteur on the merits and defects of the road map, and on women's empowerment as a key to democracy and human rights.

36. *Mr. Belinga-Eboutou* (*Cameroon*), *Chairman, resumed the Chair.*

37. **Mr. Pinheiro** (Special Rapporteur), in reply to the representative of the United States, said that he had proposed an independent investigation of the Depayin incident to the Government of Myanmar but had not yet received a formal answer. It would, however, be in Myanmar's best interests to conduct such an investigation. There were irregularities in the reported number of persons detained; the Government had given the figure of 153, while others had informed him that about 250 was more accurate. He had been able to confirm that 109 detainees had been released thus far. As to the number of casualties, both sides confirmed that four persons had been killed, which did not rule out the possibility that more had been wounded.

38. He had not taken the eyewitness accounts of the incident at face value, but had independently verified them. He would be most willing to talk with people in the camps on the Thai border if the Government would allow him access. He agreed with the representative of Myanmar that he should not have designated the road map "so-called", and withdrew that description.

39. In reply to the representative of China, he said that it would be difficult for the atmosphere between Daw Aung San Suu Kyi to be cordial under the circumstances, although her immediate release would improve the situation. She had seen only the Special Envoy, the representative of the International Committee of the Red Cross and himself since the beginning of her most recent confinement, but he had

found her in a positive frame of mind. She did not see the events of 30 May as an obstacle to dialogue; there had been regression, but also opportunity to move forward.

40. As for the seven-step road map, it was not in his mandate to advise Governments on political processes. By proposing seven steps, the Government recognized the requirements of transition. It was clear that basic freedoms, including the freedom of assembly, must be restored. He tried to maintain a gender perspective while carrying out his mandate, and there had been some recent positive signs, but his most recent report had not addressed women's empowerment as such.

41. **Ms. Al Haj Ali** (Syrian Arab Republic) asked if the situation in Myanmar constituted a threat to regional and international security. She would also like to hear the Special Rapporteur's impressions of the reaction of members of the Association of Southeast Asian Nations (ASEAN) to the road map at their recent summit in Bali.

42. In response to the representative of the Syrian Arab Republic, he said that the Secretary-General's Special Envoy, Razali Ismail, would be in a better position to comment on that question. His own mandate from the Commission on Human Rights was to examine the situation of human rights in Myanmar. However, he had met with the ambassadors of member countries of ASEAN and believed that they were concerned about the normalization of the political process in Myanmar. He counted on the ambassadors to impress on the Myanmar authorities that, for the road map to succeed, it was essential to recognize some basic freedoms. His only concern was the inclusion of human rights in the political process. If the road map went forward without taking his concerns into account, he was sceptical that any progress could be made. He would be interested in hearing the perception of the countries of the region regarding the transition and social conditions in Myanmar.

43. **Ms. Kapalata** (United Republic of Tanzania) said that some observers had linked the success of his mission and that of the Special Envoy to the ongoing humanitarian assistance, including that related to HIV/AIDS, and she would be interested to hear the Special Rapporteur's opinion in that regard.

44. **Mr. Mushtaq** (Pakistan) said that some sources had reported that at least 70 people had died in the 30 May incident near Depayin, while the Government maintained that there had been only four deaths. He wished to know whether the Special Rapporteur had any relevant information from an independent source.

45. **Ms. Pham Thi Kim Anh** (Viet Nam) said that, from the report, it appeared that the Depayin incident was a step backwards in the national reconciliation process; however, some people considered that challenges could open up opportunities and she asked if the Special Rapporteur saw such an opening.

46. **Mr. Pinheiro** (Special Rapporteur), in response to the Tanzanian representative, said that he worked in close cooperation with his colleagues from the other United Nations agencies, which were playing a very useful role in Myanmar; almost $100 million had been contributed for projects in that country. He and the Special Envoy had different roles to play, and there was no specific link between those roles, or between his work and the work of humanitarian assistance; however, he consulted with his colleagues, was aware of their activities and shared information with them.

47. In response to the question from the representative of Pakistan, he said that he was not in a position to acknowledge more than four deaths.

48. In response to the representative of Viet Nam, he said it was necessary to consider that, when Myanmar spoke of national reconciliation, it was referring to unity, ceasefire and the pacification of opposition groups. The Depayin incident in May 2003 had had deplorable consequences, because it had resulted in an interruption of the political dialogue and confidence-building; all the offices of the National League for Democracy had been closed, its General Secretary, Daw Aung San Suu Kyi, had been placed under house arrest, and some of its members had been detained. Progress was being made prior to that incident but, since then, only one party had been able to operate. National reconciliation was a complex process, involving dialogue and political transition, and the incident had affected the political process itself.

49. **Ms. Kéita-Bocoum** (Special Rapporteur on the situation of human rights in Burundi), introducing her report (A/58/448), reviewed the main points of the report and said that, since its submission, progress had been made in the political situation in Burundi. President Ndayizeye and Pierre Nkurunziza, leader of the principal armed group, the Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie (CNDD-FDD) had reached an agreement in

Pretoria on 8 October concerning the distribution of government posts and the participation of rebel troops in the army, the police and the National Assembly. Then, on 2 November, Pierre Nkurunziza and the Government had signed a protocol on power sharing. The only unresolved issue was the rebel group's participation in the Senate.

50. **Mr. Nteturuye** (Burundi) thanked the Special Rapporteur for her report and said that the general observations were similar to those of previous reports. Burundi continued to be a conflict zone, the population endured extreme poverty, and the human-rights situation was fraught with uncertainty. However, Burundi was closer to peace than ever before and there was a great deal of hope. Much had been accomplished recently through negotiations between the Transitional Government and CNDD-FDD; an agreement had been reached on power sharing and on the entry of CNDD-FDD troops into the army and the police. Fighting had ceased throughout most of the country, with the exception of the province of Bujumbura-Rural, where the Parti pour la libération du peuple hutu-Forces nationales de libération (PALIPEHUTU-FNL) continued to operate and refused to join the peace process.

51. He acknowledged the contribution of the President and Vice-President of South Africa to the negotiation of the agreement as well as the constant support of the Regional Initiative States, the African Union and the United Nations. A summit meeting would be held at the end of the week in Dar-es-Salaam to sign an agreement between the Transitional Government and CNDD-FDD; he hoped that the heads of State would take a decision concerning possible measures to persuade PALIPEHUTU-FNL to join the peace process.

52. In referring to the attacks on the capital, Bujumbura, in July 2003, the report did not condemn the attacks on the civilian population by FNL, yet it mentioned children who appeared to have been killed by soldiers of the regular army while trying to escape. Regarding the rebels, it mentioned common graves dug by FNL and said that a number of bodies had been found. It stated that the identity of the perpetrators was unclear, yet it was well known that they had been PALIPEHUTU-FNL rebels (A/48/448, paras. 33-35). It was surprising that the Special Rapporteur was so affirmative when speaking of the soldiers and less so when referring to the rebels. She had accused the army of not allowing children to surrender; but the attack had taken place at night and it was not easy to distinguish between children and adults in a situation of conflict and at night.

53. Although the situation of the *sinistrés* (survivors) was not good (ibid., paras. 52-55), the Government had created the National Commission for the Rehabilitation of *Sinistrés* (Survivors), showing that it was determined to attend to that section of the population as well as to the question of land. The Government was seeking funds for the Commission from its own budget and from international sources.

54. Regarding women's rights, the draft bill on matrimonial dispositions, successions and regimes would be presented to the Council of Ministers shortly (ibid., para. 63). The Special Rapporteur appeared to doubt that the bill would be effective as it had been delayed for some time. He suggested that she should have waited to see the results, rather than making presumptions about its outcome. The situation was delicate owing to a certain cultural atavism and it had taken time to study the question in order to arrive at an acceptable law.

55. The report mentioned that the demobilization of children was taking a long time in spite of the agreement signed between the Government and the United Nations Children's Fund (UNICEF) (ibid., para. 72). However, the Government had been collecting information and had organized training sessions for army officials on how to deal with children who were captured. Following the Pretoria Agreement, the militia would be disarmed and demobilized according to a timetable, and focal points had been identified in the rebel groups and in the Government.

56. Regarding the Itaba case (ibid., para. 83), the report stated that soldiers had been arrested, tried, sentenced to four months in prison and then freed, and no appeal had been lodged. The Pretoria Agreement provided for provisional amnesty for the FDD rebels and members of the national army.

57. With regard to Dr. Kassi Manlan (ibid., para. 86), the case dated back more than a year, but there had been new developments. Three alleged perpetrators had been arrested, including two policemen, and they would be prosecuted.

58. The report noted that the absence of a ceasefire and the continued clashes were obstacles to pursuing

the peace and national reconciliation process (ibid., para. 93). While the conflict continued it was difficult to improve the human-rights situation, even though the Government was doing its utmost to protect and aid the population. The international community also had a role to play in helping the Government by providing financial and humanitarian assistance. It was also necessary to bring the remaining rebel troops into the peace process, and provide assistance to all the *sinistrés* (survivors), including the voluntary returnees.

59. The security situation had improved considerably and he invited the United Nations to lift the Security Phase IV restriction that was still in effect in some parts of the country and prevented humanitarian assistance workers from having access to the *sinistrés* (survivors).

60. **Ms. Melchiorre** (Italy), speaking on behalf of the European Union, asked if the Special Rapporteur had any more up-to-date information on the children held in prisons and on what was being done to protect and help other children suffering as a result of the conflict, such as child soldiers, street children and children suffering from AIDS.

61. **Ms. Kéita-Bocoum** (Special Rapporteur) thanked the representative of Burundi for the additional information he had provided. She added that four of the five people arrested in connection with the Manlan case were police officers and that neither the Principal State Prosecutor nor the Chief Military Prosecutor appeared to have taken any action in the Itaba case, in which an appeal had been lodged. She maintained that her report was impartial: in the section on violations of the right to life, killings by FNL troops were mentioned as well as killings by regular-army soldiers. With regard to the Commission for the Rehabilitation of *Sinistrés* (Survivors), she said it was still not clear to her precisely what authority it had. Nevertheless, she called on the international community to help it carry out its tasks, including by providing financial support.

62. In reply to the questions raised by the representative of Italy, she said that children in Burundi continued to face all kinds of very serious problems, including sexual abuse. Among the efforts being made by UNICEF, the Office of the United Nations High Commissioner for Human Rights and the Burundian Government to improve the situation of children, she highlighted moves to reform the Penal Code and raise the age of criminal responsibility, which was currently 13. Although the official age of recruitment into the army had been raised from 16 to 18, some parents still sent their children to the army before the age of 18, as the army offered a way out of poverty and provided a certain social status. There were estimated to be between 6,000 and 10,000 child soldiers in Burundi. She looked forward to their demobilization as well as that of children serving in militias, who often had little training and ended up in prison. Centres had been set up by United Nations agencies and non-governmental organizations to provide medical and psychological care for women and children who were the victims of sexual abuse, but in the light of recent events there was an urgent need for greater cooperation between all concerned. One positive development was that, for the first time, women in Burundi had taken allegations of sexual abuse to the Chief Military Prosecutor and the latter had taken up their case. She had no updated figures on the number of children in prison, but their plight was recognized and would be addressed in the reforms of the Penal Code. In short, awareness had been raised with regard to the problems facing children and some action had been taken, but the Government had not yet taken the necessary practical steps to put an end to the abuse of children in Burundi.

63. **Ms. Motoc** (Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo) introduced her report (A/58/534), completed following her third visit to the Democratic Republic of the Congo in August/September 2003, by summarizing its main points. Considerable progress had been made at the political level in recent months and she had detected a collegial and cooperative spirit among the members of the new Government. However, the situation in the country continued to be characterized by massive violations of human rights, which encompassed all the violations defined in the Rome Statute of the International Criminal Court. She welcomed the decision by the Prosecutor of the International Criminal Court to make the Democratic Republic of the Congo the first State to be investigated by him. However, she believed that a judicial mechanism needed to be established to investigate human-rights violations that had taken place before the Rome Statute had entered into force in July 2002. She expressed confidence in the reconciliation process in the country, whose people had exceptional moral resources and determination. Her conclusions included a call to all parties in the conflict to end their support

for armed groups and to respect the rights of women and children and a call to the Government of the Democratic Republic of the Congo to create the conditions for a truly democratic process in the country and to cooperate with the International Criminal Court.

64. **Mr. Ngay** (Democratic Republic of the Congo) said that the report presented a generally balanced view of recent developments in his country. However, he felt that the Special Rapporteur's recommendation with regard to combating impunity, which was addressed solely to his Government, was incomplete: she had not addressed any related recommendation to the international community. His Government had already taken steps on its side to combat impunity — for instance by abolishing the Military Court and ratifying the Rome Statute of the International Criminal Court — and would have welcomed the inclusion in the report of a recommendation calling on the international community to establish an international tribunal for the Democratic Republic of the Congo. Instead, the Special Rapporteur had limited herself to a statement, in paragraph 57 of the report, in favour of establishing a commission of inquiry or experts as proposed by the late United Nations High Commissioner for Human Rights, Mr. Vieira de Mello, to deal with the serious human-rights violations that had taken place before July 2002.

65. He expressed concern that the Special Rapporteur, in paragraph 55 of her report, spoke of the obligation of the Democratic Republic of the Congo to deliver up to justice the perpetrators of genocide, crimes against humanity and war crimes "at least where those crimes were committed on national territory by Congolese citizens". He wondered what action she envisaged in the case of foreigners who committed massive human-rights violations in Congolese territory.

66. Lastly, he wondered if the Special Rapporteur felt that the security situation in his country, which she had already visited three times, was stable enough for her to carry out a joint mission to the Democratic Republic of the Congo with the Special Rapporteur on extrajudicial, summary or arbitrary executions, a suggestion which had been brought up repeatedly at sessions of the Commission on Human Rights.

67. **Ms. Borzi Cornacchia** (Italy), speaking on behalf of the European Union, asked if the Special Rapporteur thought that the abolition of the Military Court would change the situation she had described in her report, in which most crimes were dealt with by military courts, and if she believed that the Government had the political will to change that situation. She also asked if the Special Rapporteur thought there was likely to be any change soon in the practice of recruiting children to serve in militias.

68. **Mr. Beyendeza** (Uganda) said he was concerned that paragraph 30 mentioned various groups of combatants, including the Ugandan People's Defence Force, and spoke of various massacres that had taken place, but failed to specify which group was responsible for the massacres.

69. **Ms. Motoc** (Special Rapporteur), replying to the representative of the Democratic Republic of the Congo, said that there were two parts to the question of impunity: one concerned impunity for massive human-rights violations, which would be dealt with by the International Criminal Court, and the other concerned impunity in cases of individual human-rights violations, which would be treated as crimes and dealt with by the relevant local courts. A number of solutions had been proposed for an international mechanism to deal with the problem of massive human-rights violations that the International Criminal Court could not deal with because they had taken place before July 2002. One suggestion for the first step in establishing such a mechanism was for a joint mission of special rapporteurs to visit the country, but that suggestion had always been met by objections that the security situation ruled out such a mission and that there were no funds available for one anyway. At its most recent session, therefore, the Commission on Human Rights had taken up Mr. Vieira de Mello's idea of a commission of inquiry or experts as a first step towards guaranteeing that justice was done in respect of massive human-rights violations committed before July 2002. In general, she was in favour of involving the international community in putting in place an effective judicial mechanism of some kind: history showed that countries emerging from a period of massive human-rights violations needed outside help if the perpetrators were to be brought to justice.

70. As far as impunity in the case of individual human-rights violations was concerned, she was convinced that the current Government had the political will to pursue the necessary reforms in the administration of justice. On the question of bringing foreign nationals to justice for massive human-rights

violations committed in the Democratic Republic of the Congo before July 2002, she said that an international mechanism of the kind that had been discussed would deal with the cases of foreigners as well as Congolese nationals.

71. In reply to the questions raised by the representative of Italy, she said that progress in the administration of justice was less apparent in the east of the country than in the capital or other regions, but she was encouraged to see that, since the abolition of the Military Court, other courts were taking steps to restore property confiscated by the Military Court and were investigating inspectors who had confiscated property illegally. She stressed the importance of coordinating reform of the judicial system in all parts of the country. With regard to the recruitment of children to militias, she had the impression that, partly because of the continued fighting in the east of the country, little real progress had been made despite the efforts of non-governmental organizations and the international community.

72. Lastly, in reply to the comment by the representative of Uganda, she said that the support provided by Uganda to the militias was a matter of common knowledge and that the references in her report to the actions of Ugandan troops referred to troops who were there in an official capacity.

The meeting rose at 1.15 p.m.